


OGC 73-0643

13 April 1973

MEMORANDUM FOR: Chief, B&F



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SUBJECT : Taxation of Resident Aliens Employed  
at 

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1. In a telephone conversation yesterday you advised that a State Department message had cautioned that resident alien employees of the U.S. at foreign posts might endanger their qualification for naturalization if they claimed exemption from U.S. income taxes in accordance with Revenue Ruling 72-297. My memorandum to you dated 22 September 1972 advised that resident alien status for naturalization purposes is not inconsistent with non-resident alien status for federal income tax purposes. I have again confirmed through William Ceglie, Chief, Review Staff, Audit Division, Office of International Operations/IRS, that this advice was correct. However, he did suggest some modifications of his previous recommendation for claiming exemption or refunds.

2. At the time of application for naturalization, it may be necessary to prove to I&NS that one has filed tax returns. Rather than filing a return as a non-resident alien, it would be preferable to file a regular 1040, completing only the name, address and signature lines and indicating thereon that a statement is attached. The statement should recite the details of the individual's immigration and resident status as suggested in paragraph 4 of my aforementioned memorandum. It should clearly indicate that the individual has been admitted to the United States as a resident alien, but is claiming exemption or

a refund, as the case may be, under the provisions of Revenue Ruling 72-297. A refund may be claimed either by using Form 1040X, which is the amended return form, or Form 843, which is a claim form. The latter form is probably simpler to use in seeking a refund of taxes erroneously paid.

3. I have been assured that IRS has cleared this question with an Assistant Commissioner of the Immigration and Naturalization Service. Individuals qualifying under Revenue Ruling 72-297 are exceptions to the caution stated on page 4 of IRS Publication 519, which is referenced in the State Department message.

4. You may wish to further revise Section XII3 of the  If you used the suggested revision I attached to my earlier memorandum, you may insert a sentence just before the last sentence to read as follows:

The employee should file a Form 1040 each year, completing only the address and signature lines and attach a statement indicating his resident alien status, the complete facts and dates of his immigration and presence in the U.S. and abroad and that he is claiming exemption under Revenue Ruling 72-297.

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Assistant General Counsel

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Original - Addressee

✓ - SUBJECT - FEDERAL TAXES

1 -  Signer

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